

M e m o r a n d u m**375.0886**

To: Mr. Jack A. Infranca
Van Nuys – District Principal Auditor

Date: September 10, 1990

From: Glenn A. Bystrom
Principal Tax Auditor

Subject: F--- I---, Inc.

SR -- XX-XXXXXX

In a memorandum dated June 11, 1990, from Senior Tax Auditor Norman W. Rice of your staff, my advice was requested regarding the sale of release prints by F--- I---, Inc. (F---) to L--- G--- L--- P--- (L---).

It is my understanding that L---, an unpermitted California firm, owns the rights and negatives to the television series, “--- ---”. L--- sold their broadcast rights to G--- Entertainment, (G---) a foreign distributor. L--- contracted with F---, a film processing laboratory, to manufacture release prints on 16 mm film which could be used by G--- for exhibition purposes to the public over television in England. L--- also contracted with D---, Inc., (D---) to pick up the release prints from F---, prepare the prints for shipment, and ship them to G--- in England via a common carrier. It is also my understanding that D---, a videotape duplicating laboratory, did nothing more with the prints.

You ask whether F---’s charge for manufacturing the release prints is exempt as a sale for export.

L---’s contract with G--- obviously was for the sale of both broadcasting rights and tangible personal property (release prints). Consequently, F---’s sale of the release prints to L--- appears to be an exempt sale for resale since L--- resold the prints to G--- presumably without making any use of them. Further, L---’s sale of the prints to G--- appears to be an exempt sale for export.

Therefore, assuming that L--- and G--- are separate legal entities, the sale by F--- to L--- is an exempt sale for resale and the question of whether that sale is an exempt sale for export is moot.

You also asked whether D---, Inc., qualifies as a “Forwarding Agent” per Regulation 1620(a)(3)(B)(2) by “regularly engaging in the business of preparing property for shipment or

arranging for its shipment” even though it is not licensed as such, nor does it advertise as such. You also explained that D--- routinely performs overseas shipping services for its customers.

A person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment is a forwarding agent regardless of whether that is their primary business. Based upon your description of D---’ activities, it appears that D--- would qualify as a forwarding agent. (Consequently, if L--- and G--- were not separate legal entities, the sale by F--- to L--- would still be exempt as an export sale provided D--- did nothing more with the prints other than prepare them for shipment and so ship them.)

You also asked the following questions which relate to the sales of release prints.

Question

Does the placing of the motion picture film on “reels” by a “mounting house” constitute a step in the “manufacture of release prints,” and hence the sale by F--- of the film on “spools” is not a release print but is instead an “intermediate”, and hence taxable at cost to F--- as a qualified production service? (i.e., at what stage does a release print become a “release print” by definition?)

Response

A release print is a print (copy of a motion picture film) produced on high quality stock and used for exhibition to the public. The sale of such a print is subject to tax, unless otherwise exempt, regardless of whether it is wound on spools or reels. Further, the initial winding of a release print on “reels” by a mounting house constitutes taxable fabrication labor.

Question

If the placing of the film on reels IS required to make the film a “release print”, would the significance of whether the agent of the buyer or the seller of the film performed this spooling service to prepare the film for exhibition be “crucial”?

Response

Since the placing of the film on reels is not required to make the film a “release print” the question is moot.

Question

In audits of motion picture and television industry permittees, can we allow for offsets of a taxpayer's own tax liability (i.e. cost of raw stock used on the performance of qualified production services) against the tax reimbursement collected and reported from the customer at retail as per Regulation 1700(b)(4)?

Response

Regulation 1700(b)(4) provides that excess tax reimbursement may be offset against a tax liability of the taxpayer on the same transaction if possession of the property upon which the taxpayer's liability is based is transferred, either temporarily or permanently, to the customer.

Therefore, a tax liability on the cost of raw stock which can be identified to a particular qualified production service may be offset against any excess tax reimbursement collected and reported on that particular transaction provided the property is transferred to the customer.

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cc: District Principal Auditors

Memorandum

375.0886

To: Mr. Glenn Bystrom

Date: May 29, 1996

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed your memorandum of September 10, 1990 to Jack Infranca.

We are in agreement with his conclusion, as follows:

Mounting Film on Reels. A release print is a copy of a motion picture film produced on high quality stock and used for exhibition to the public. It is a release print regardless of whether it is wound on spool or reels. However, the initial winding of a release print on reels by a mounting house is taxable fabrication labor. 9/10/90.

Gary Jugum